

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MUHAMMAD KHAN,

Plaintiff,

v.

M. PAYTON, et al.,

Defendants.

Case No. 20-cv-03086-BLF (PR)

**ORDER DENYING MOTION TO  
COMPEL; GRANTING  
EXTENSION OF TIME TO FILE  
OPPOSITION**

(Docket No. 78)

Plaintiff, a California inmate, filed a *pro se* civil rights complaint pursuant to 42 U.S.C. § 1983 against employees of San Quentin State Prison (“SQSP”). Defendants filed a motion for summary judgment on November 15, 2023. Dkt. No. 72. Plaintiff was granted an extension of time until January 29, 2024, to file opposition. Dkt. No. 76.

On January 22, 2024, Plaintiff filed a motion under Federal Rule of Civil Procedure 37(a), to compel Defendants to answer his “deposition upon written questions,” grant funds for a deposition officer, and an extension of time to file opposition in light of pending discovery issues. Dkt. No. 78. Plaintiff states that Defense counsel has refused to respond to his written questions without a deposition officer. *Id.*

Rule 37(a) provides that a party may move for an order compelling disclosure or discovery. Fed. R. Civ. P. 37(a)(1). The motion must include a certification that the

1 movant has in good faith first attempted to meet and confer before seeking court action.  
 2 *Id.* Here, Plaintiff provides a copy of defense counsel's initial response to his request.  
 3 Dkt. No. 78 at 2. Counsel correctly asserts in the letter that a deposition upon written  
 4 questions requires the presence of a deposition officer under Rule 30. *Id.* Plaintiff does  
 5 not indicate in the motion that he made any attempt thereafter to meet and confer to resolve  
 6 this discovery dispute. Accordingly, the motion to compel is DENIED for failure to satisfy  
 7 the meet and confer requirement of Rule 37(a).

8 Plaintiff's request for funds to hire a deposition officer is also DENIED. Plaintiff  
 9 has other means of obtaining discovery under the Federal Rules of Civil Procedure which  
 10 do not require the use of funds. *See, e.g.,* Fed. R. Civ. P. 33, et seq. Furthermore, Plaintiff  
 11 has set forth no explanation as to why deposition by written questions is the only means for  
 12 him to conduct discovery.

13 In light of Plaintiff's need to complete discovery, his motion for further extension of  
 14 time to file opposition to Defendants' summary judgment is **GRANTED**. Plaintiff is  
 15 granted an extension of sixty (60) days, such that his opposition shall be filed **no later**  
 16 **than March 29, 2024**. Defendants shall file a reply **within fourteen (14) days** from the  
 17 date Plaintiff's opposition is due.

18 This order terminates Docket No. 78.

19 **IT IS SO ORDERED.**

20 Dated: January 30, 2024

  
 BETH LABSON FREEMAN  
 United States District Judge